

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. _____

UNITED STATES OF AMERICA,)
Petitioner,)
v.) CERTIFICATION OF A
DAVID HENRY TOBEY,) SEXUALLY DANGEROUS PERSON
Register Number 22008-037,)
Respondent.)

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby submits the attached Certification of a Sexually Dangerous Person pursuant to Title 18 U.S.C. § 4248(a).

Respectfully submitted, this 6th day of September, 2007.

George E. B. Holding
United States Attorney

N.C. Bar # 26068

CERTIFICATE OF SERVICE

This is to certify that I have this 6th day of September, 2007, served a copy of the foregoing upon the Respondent in this action by placing the documents in an envelope marked as stated below, and providing it to FCC Butner staff to deliver the envelope in hand to:

David Henry Tobey
Reg. No.: 22008-037
FCI Butner

and on the same day served a copy of the foregoing by placing a copy in the U.S. Mail, addressed as follows:

Office of the Federal Public Defender
150 Fayetteville Street Mall
Suite 450
Raleigh, North Carolina 27601

/s/ Michael Bredenberg
Michael Bredenberg
Special Assistant U.S. Attorney
Civil Division

CERTIFICATION OF A SEXUALLY DANGEROUS PERSON

(1) I, Anthony A. Jimenez, am Chairperson of the Federal Bureau of Prisons (Bureau) Certification Review Panel, Washington, D.C. Pursuant to 28 C.F.R. § 0.97, the Director of the Bureau has delegated to me the authority to certify persons in Bureau custody as sexually dangerous, as authorized by 18 U.S.C. § 4248(a).

(2) Bureau records reflect the following: Inmate David Henry Tobey, Register Number 22008-037, is in Bureau custody at the Federal Correctional Institution, Butner, North Carolina, in service of a 60-month term of imprisonment and three years supervised release, following his conviction for Unlicensed Dealing in Firearms, in violation of 18 U.S.C. § 922(a)(1)(A) (D. Md.) (Case No. DKC 03-0151). His projected release date is September 8, 2007.

(3) Based on a review of his Bureau records, I certify he is a sexually dangerous person as defined by 18 U.S.C. § 4247(a)(5), and sexually dangerous to others as defined by 18 U.S.C. § 4247(a)(6). My certification is based on information found in Bureau records which includes, but is not limited to, the following:

(a) He previously engaged or attempted to engage in sexually violent conduct or child molestation as evidenced by his prior convictions for: Three counts of Child Abuse,

in the Circuit Court for Montgomery County, Maryland (Case Nos. 68751, 70683, 70684), in a series of incidents that involved him engaging in vaginal intercourse, digital penetration, cunnilingus and attempted fellatio, and sexual touching with the daughter of a female friend when she was between the ages of seven and fourteen years old; Attempted Sexual Battery Upon a Child and Lewd, Lascivious, or Indecent Assault or Act Upon or in the Presence of a Child, in the Twelfth Judicial Circuit Court, Manatee County, Florida (Case No. 78-7F), in an incident that involved him engaging in fellatio with a seven-year-old boy and having the child manipulate his penis in a masturbatory fashion;

(b) A limited psychological review indicated the following: Axis I diagnoses of Pedophilia, Sexually Attracted to Both, Nonexclusive; Alcohol Abuse; and Cannabis Abuse; Axis II diagnosis of Antisocial Personality Disorder;

(c) An initial assessment of him using two actuarial risk assessment instruments (Static-99 and Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR)) was conducted. These results, in addition to his prior offense conduct, poor sexual self-regulation, minimizations and/or denial of his sexual offense convictions, failure to actively participate in court-ordered sex offender treatment, a history of noncompliance with parole/supervised

release, and a history of substance abuse, indicate he will have serious difficulty refraining from sexually violent conduct or child molestation if released.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Anthony A. Jimenez

Anthony A. Jimenez
Chairperson
Certification Review Panel
Federal Bureau of Prisons

9/04/2007

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. _____

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.) ORDER
)
DAVID HENRY TOBEY,)
Register Number 22008-037,)
)
Respondent.)

At the request of the Director of the Bureau of Prisons, the government has filed a Certification of a Sexually Dangerous Person pursuant to 18 U.S.C. § 4248, in order for this court to hold a hearing to determine whether the Respondent is a sexually dangerous person as defined by 18 U.S.C. § 4247(a)(5).

Respondent, having demonstrated eligibility for appointment of counsel at government expense, the Federal Public Defender IS DIRECTED to provide representation in this action.

The Court further determines that the Respondent is unable to pay the fees of any witness, and pursuant to Federal Rule of Criminal Procedure 17(b) the Clerk shall issue a subpoena for any witness necessary to present an adequate defense to the pending charge or charges.

The Court further ORDERS that the United States Marshal shall serve any subpoenas presented to him in this case by the office of the Federal Public Defender, and shall pay the appropriate fees and expenses to witnesses so subpoenaed.

Pursuant to 18 U.S.C. section 4247(b), the Court ORDERS the government to conduct a psychiatric or psychological examination of Respondent. Pursuant to this section, if the Respondent wishes to request an additional examiner, he shall request such by separate motion to this court.

The Court hereby notifies the parties that this case has been set for Hearing by videoconference at _____ AM/PM on _____. The hearing shall be held in Courtroom #2, Seventh Floor, of the Terry Sanford Federal Building, 310 New Bern Avenue, Raleigh, North Carolina.

This ____ day of _____, 2007.

W. EARL BRITT
Senior U.S. District Judge